



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

2005 MAR -2 PM 12: 41

IN THE MATTER OF

U.S. Department of Interior  
Bureau of Indian Affairs,  
Great Plains Region and  
Pine Ridge Agency

(Pine Ridge Road Shop and  
Kyle Road Shop Facilities)

Respondent.

Docket No. SDWA-08-2003-0038

**CONSENT AGREEMENT**

FILED  
EPA REGION VIII  
HEARING CLERK

Complainant, United States Environmental Protection Agency, Region 8 ("EPA"), and Respondent, U.S. Department of Interior, Bureau of Indian Affairs ("BIA") (hereafter referred to collectively as "the Parties"), by their undersigned representatives, hereby consent and agree as follows.

**FACTUAL AND PROCEDURAL BACKGROUND**

1. On July 3, 2003, Complainant issued Respondent a Proposed Administrative Order and Opportunity to Request a Hearing ("Order") pursuant to sections 1423(c) and 1447(b)(2) of the Safe Drinking Water Act ("SDWA" or "the Act"), 42 U.S.C. §§ 300h-2(c) and 300j-6(b)(2). The Order alleged that Respondent Bureau of Indian Affairs' Pine Ridge and Kyle Road Shop facilities were in violation of the Act, 42 U.S.C. § 300f et seq., and the Underground Injection Control regulation codified at 40 C.F.R. parts 124, 144, 146, 147 and 148, specifically 40 C.F.R. §§ 144.12(a), 144.24(c) and 144.84. The Order proposed a civil penalty for the violations alleged.

2. Respondent admits the jurisdictional allegations of the Order and the Consent Agreement and neither admits nor denies the specific factual allegations of the Order and the Consent Agreement.

3. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Order or the Consent Agreement.

4. This Consent Agreement contains all terms of the settlement agreed to by the Parties. Upon incorporation into a final order, this Consent Agreement applies to and is binding upon Respondent, its officers, directors, employees, agents and all persons acting under or for Respondent, until such time as the civil penalty required under paragraph no. 6 has been paid. This Consent Agreement upon incorporation into a final order shall constitute full civil settlement of the violations alleged in the Order.

5. Respondent's Pine Ridge and Kyle Road Shop facilities are currently in compliance with the Act and 40 C.F.R. §§ 144.12(a), 144.24(c) and 144.84.

6. Pursuant to section 1447(b) of the Act, 42 U.S.C. § 300j-6(b), the nature of the violations, and after taking into consideration the seriousness of the alleged violations, the population at risk, and other appropriate factors, including with respect to the violator, ability to pay, the past history of such violations, degree of culpability, and other matters as justice may require, EPA has determined that an appropriate civil penalty to settle this action is in the amount of twenty-eight thousand six hundred ninety-one dollars (\$28,691).

### TERMS OF SETTLEMENT

7. Respondent consents to the issuance of the Consent Agreement and consents, for the purposes of settlement and without admitting any of the allegations in the Order not heretofore admitted, to the payment of the civil penalty cited in paragraph no. 6.

8. No later than the end of the first quarter of calendar year 2005, specifically March 31, 2005, Respondent shall make payment by Intra-Governmental Payment and Collection System ("IPAC") in the amount of nine thousand five hundred sixty three dollars and sixty seven cents (\$9,563.67) to EPA's Agency Location Code: 68011008.

9. A copy of the IPAC report shall be simultaneously provided to:

Tina Artemis, Regional Hearing Clerk (8RC)  
U.S. EPA Region 8  
999 19th Street, Suite 300  
Denver, Colorado 80202-2466

and to:

Amy Swanson, Attorney  
Legal Enforcement Program (8ENF-L)  
U.S. EPA Region 8  
999 19th Street, Suite 300  
Denver, Colorado 80202-2466

10. Respondent agrees to make two additional, consecutive payments respectively due no later than the end of the 2<sup>nd</sup> quarter (specifically June 30, 2005) and the 3<sup>rd</sup> quarter (specifically September 30, 2005) of 2005, each in the amount of nine thousand five hundred sixty three dollars and sixty seven cents (\$9,563.67), in the same manner as referenced above in Paragraph Nos. 8 and 9.

11. Respondent further agrees and consents that if it fails to make the first penalty payment by March 31, 2005, the full penalty amount agreed to here-in shall become due and owing by Respondent. In the event that Respondent fails to pay any of the subsequent two penalty payments by their respective deadlines, the full outstanding penalty amount shall become due and owing by Respondent. Furthermore, interest on the penalty amount shall accrue from the date of the order at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. A late payment charge of fifteen dollars (\$15.00) shall be imposed after the first 30 days that any of the payments, or portions thereof, are overdue, with an additional charge of fifteen dollars (\$15.00) imposed for each subsequent 30-day period until the payments are made. In addition, a six percent (6%) per annum penalty shall be applied on any principal amount not paid within 90 days of the due date of the final order or subsequent due dates.

12. The penalty specified in paragraph 6 above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

### **GENERAL PROVISIONS**

13. The Parties agree to resolve all disputes regarding the provisions of this Consent Agreement through dispute resolution proceedings as defined and governed by 5 U.S.C. Section 571 et seq., in recognition that timely resolution of disputes is essential to the overall goal of environmental compliance. All disputes arising under this Agreement that cannot be resolved informally amongst the Parties shall be submitted to a neutral available through the Federal Mediation and Conciliation Service or other available DOI or EPA agency dispute resolution techniques. The term "dispute" is intended to be interpreted broadly, including but not limited to

disagreements over payment amount(s) and deadlines. Reimbursement of and general compensation for the neutral shall be paid equally by all Parties involved in each individual dispute referred for resolution.

14. This Consent Agreement shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law.

15. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with the SDWA and its implementing regulations.

16. Nothing in this Consent Agreement shall be construed as a waiver by the EPA of its authority to seek costs or any appropriate penalty associated with a collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Consent Agreement.

17. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this Consent Agreement and to bind the Respondent to the terms and conditions of this Consent Agreement.

18. The Parties agree to submit this Consent Agreement to the presiding officer with a request that it be incorporated into a final order.

19. Each party shall bear its own costs and attorneys fees in connection with this matter.

20. This Consent Agreement, upon incorporation into a final order by the presiding officer and full satisfaction by the Parties, shall be a complete and full civil settlement of the specific violations alleged in the Order.

21. This Consent Agreement shall become effective upon filing with the presiding officer.

**SO CONSENTED TO AND AGREED:**

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8,  
Complainant.

Date: 2/28/05

By: Elisabeth Evans  
Elisabeth Evans, Director  
Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

Date: 2.28.05

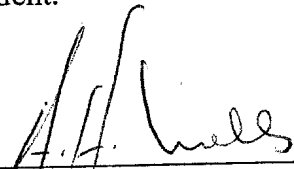
By: David Janik  
Michael T. Risner, Director  
David J. Janik, Supervisory Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

Date: 2.28.2005

By: Amy Swanson  
Amy Swanson, Enforcement Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

UNITED STATES DEPARTMENT OF THE  
INTERIOR, BUREAU OF INDIAN AFFAIRS,  
Respondent.

Date: 2/25/05

By:   
Director  
Bureau of Indian Affairs  
U.S. Department of the Interior

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **U. S. DEPARTMENT OF INTERIOR, BUREAU OF INDIAN AFFAIRS, GREAT PLAINS REGION AND PINE RIDGE ROAD SHOP & KYLE ROAD SHOP FACILITIES, DOCKET NO.: SDWA-08-2003-0038** was filed with the Regional Hearing Clerk on March 2, 2005.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Amy Swanson, Enforcement Attorney, U. S. EPA – Region 8, 999 18<sup>th</sup> Street, Suite 300, Denver, CO 80202-2466. True and correct copies of the aforementioned document was telefaxed and placed in the United States mail certified/return receipt requested on March 2, 2005, to:

Stephen L. Simpson, Attorney  
U. S. Department of Interior  
Office of the Solicitor, Division of Indian Affairs  
1849 C Street, N.W. (Mail Stop 6456)  
Washington, DC 20240

And hand-delivered to:

Honorable Alfred C. Smith  
Regional Judicial Officer  
U.S. Environmental Protection Agency – Region 8  
999 18<sup>th</sup> Street, Suite 300 (8RC)  
Denver, CO 80202-2466

March 2, 2005



Tina Artemis  
Regional Hearing Clerk